

2014 WL 536218 (Ga.State Ct.) (Trial Pleading)
Georgia State Court.
DeKalb County

Roddna ROCKYMORE, as Administrator of the Estate of Vivian Rockymore, and Roddna Rockymore in his Representative Capacity on Behalf of the Children of Vivian Rockymore, Plaintiff,

v.

DRUMM INVESTORS, LLC, Beverly Enterprises, Inc., Golden Gate National Senior Care, LLC, GGNSC Holdings, LLC, GGNSC Clinical Services, LLC, GGNSC Administrative Services, LLC, GGNSC Decatur II, LLC d/b/a Golden Living Center Glenwood, Golden Living Center Glenwood, Alicia Holliday, John Does 1 Through 10, and Unidentified Entities 1 Through 10 (as to Golden Living Center Glenwood) and HCR Manorcure, LLC; HCR Manorcure, Inc.; Hcrmc Operations, LLC; HCR Manorcure Heartland, LLC; Manor Care, Inc.; HCR Healthcare, LLC; HCR Manor Care Services, Inc.; Heartland Employment Services, LLC; Manor Care Rehabilitation Center of Decatur, GA, LLC; Manor Care Rehab Decatur; Betsy Hill; John Does 1 Through 10; and Unidentified Entities 1 Through 10 (as to Manor Care Rehab Decatur), Defendants.

No. 14A50097.
January 24, 2014.

Complaint for Damages

By Counsel, McHugh Fuller Law Group, PLLC, [James B. McHugh](#), Georgia Bar No. 142538, [Michael J. Fuller, Jr.](#), Georgia Bar No. 624415, [D. Bryant Chaffin](#), Georgia Bar No. 926074, 97 Elias Whiddon Rd., Hattiesburg, MS 39402, Telephone: 601-261-2220, Facsimile: 601-261-2481, Attorneys for Plaintiff.

COMES NOW Plaintiffs, Roddna Rockymore, as Administrator of the Estate of Vivian Rockymore, and Roddna Rockymore in his Representative Capacity on Behalf of the Children of Vivian Rockymore, and files this Complaint for Damages against the Defendants, Drumm Investors, LLC, Beverly Enterprises, Inc., Golden Gate National Senior Care, LLC, GGNSC Holdings, LLC, GGNSC Clinical Services, LLC, GGNSC Administrative Services, LLC, GGNSC Decatur II, LLC, Golden Living Center Glenwood, and Alicia Holliday as to Golden Living Center Glenwood, and HCR ManorCare, LLC, HCR ManorCare, Inc., HCRMC Operations, LLC, HCR ManorCare Heartland, LLC, Manor Care, Inc., HCR Healthcare, LLC, HCR Manor Care Services, Inc., Heartland Employment Services, LLC, Manor Care Rehabilitation Center of Decatur GA, LLC, Manor Care Rehab Decatur, and Betsy Hill, and alleges as follows:

Preliminary, Venue, and Jurisdiction Allegations

1) Plaintiffs, Roddna Rockymore is the duly appointed Administrator of the Estate of Vivian Rockymore, having been so appointed on December 24, 2013, in the Probate Court of DeKalb County, Georgia. A copy of the Letters of Administration is attached hereto as *Exhibit "A"* and Plaintiff brings the survival actions in that capacity.

2) Vivian Rockymore died on May 18, 2013, leaving five children. Roddna Rockymore is the son of Vivian Rockymore. Roddna Rockymore, Frederick Rockymore, Janet Rockymore, Audrey Rockymore, and Kelvin Rockymore are the children of Vivian Rockymore. Roddna Rockymore brings this wrongful death action in his representative capacity on behalf of all of the statutory wrongful death beneficiaries of Vivian Rockymore. A copy of the Death Certificate of Vivian Rockymore is attached hereto as *Exhibit "B"*.

3) Defendant Drumm Investors, LLC is a Delaware corporation, and, upon information and belief, is authorized to do business in the State of Georgia, and was, upon information and belief, at all times applicable to this Complaint, engaged in the business of owning, managing, and/or operating the facility known as Golden Living Center Glenwood, located in DeKalb County, Georgia. Drumm Investors, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Golden Living Center Glenwood. The registered agent for service of process of Defendant Drumm Investors, Inc. is Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808.

4) Separate Defendant Beverly Enterprises, Inc. is a Delaware corporation with its principal place of business at 1000 Fianna Way, Fort Smith, AR 72919. The agent for service for Beverly Enterprises, Inc. is Corporation Service Company, 300 Spring Building, Ste 900, 300 South Spring Street, Little Rock, AR 72201. Beverly Enterprises, Inc. was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Golden Living Center Glenwood.

5) Separate Defendant Golden Gate National Senior Care, LLC is a Delaware corporation with its principal place of business at 1000 Fianna Way, Fort Smith, AR 72919. The agent for service for Golden Gate National Senior Care, LLC is 300 Spring Building, Ste 900, 300 South Spring Street, Little Rock, AR 72201. Golden Gate National Senior Care, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Golden Living Center Glenwood.

6) Separate Defendant GGNSC Holdings, LLC is a Delaware limited liability company with its principal place of business at 1000 Fianna Way, Fort Smith, AR 72919. The agent for service for GGNSC Holdings, LLC is CSC of Cobb County, Inc., 136 N. Fairground Street, N.E., Marietta, GA 30060. GGNSC Holdings, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Golden Living Center Glenwood.

7) Separate Defendant GGNSC Clinical Services, LLC is a Delaware limited liability company with its principal place of business at 1000 Fianna Way, Fort Smith, AR 72919. The agent for service for GGNSC Clinical Services, LLC is CSC of Cobb County, Inc., 136 N. Fairground Street, N.E., Marietta, GA 30060. GGNSC Clinical Services, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Golden Living Center Glenwood.

8) Separate Defendant GGNSC Administrative Services, LLC is a Delaware limited liability company with its principal place of business at 1000 Fianna Way, Fort Smith, AR 72919. The agent for service for GGNSC Administrative Services, LLC is CSC of Cobb County, Inc., 136 N. Fairground Street, N.E., Marietta, GA 30060. GGNSC Administrative Services, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Golden Living Center Glenwood.

9) Separate Defendant GGNSC Decatur II, LLC is a Delaware limited liability company with its principal place of business at 4115 Glenwood Road, Decatur, Georgia 30032. The agent for service for GGNSC Decatur II, LLC is CSC of Cobb County, Inc., 192 Anderson Street SE, Suite 125, Marietta, GA 30060. GGNSC Decatur II, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Golden Living Center Glenwood.

10) Separate Golden Living Center Glenwood is a nursing home operated at 4115 Glenwood Road, Decatur, Georgia 30032. The agent for service for Golden Living Center Glenwood is unknown at this time. Golden Living Center Glenwood was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Golden Living Center Glenwood.

11) Separate Defendant, Alicia Holliday, material hereto is an administrator of Golden Living Center Glenwood. Alicia Holliday is a resident citizen of the State of Georgia. Defendant, Alicia Holliday, for all times material to this lawsuit conducted business in Georgia and continues to do business in Georgia. Defendant Alicia Holliday's contacts with Georgia are systematic and ongoing such that Defendant, Alicia Holliday, could reasonably expect to be haled into a Georgia court.

12) Separate Defendant HCR ManorCare, LLC is a Delaware corporation with its principal place of business at 333 North Summit Street, Toledo, Ohio, 43604-2617. The agent for service for HCR ManorCare, LLC is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. HCR ManorCare, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Manor Care Rehab Decatur.

13) Separate Defendant HCR ManorCare, Inc. is an Ohio corporation with its principal place of business at 333 North Summit Street, Toledo, Ohio, 43604-2617. The agent for service for HCR ManorCare, Inc. is CT Corporation System, 1300 E. 9th Street, Cleveland, Ohio, 44114. HCR ManorCare, Inc. was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Manor Care Rehab Decatur.

14) Separate Defendant HCRMC Operations, LLC is a Delaware corporation with its principal place of business at 333 North Summit Street, Toledo, Ohio, 43604-2617. The agent for service for HCRMC Operations, LLC is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. HCRMC Operations, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Manor Care Rehab Decatur.

15) Separate Defendant HCR ManorCare Heartland, LLC is a Delaware corporation with its principal place of business at 333 North Summit Street, Toledo, Ohio, 43604-2617. The agent for service for HCR ManorCare Heartland, LLC is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. HCR ManorCare Heartland, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Manor Care Rehab Decatur.

16) Separate Defendant HCR Healthcare, LLC is a Delaware corporation with its principal place of business at 333 North Summit Street, Toledo, Ohio, 43604-2617. The agent for service for HCR Healthcare, LLC is The Corporation Trust Company, 1209 Orange Street, Wilmington, Delaware 19801. HCR Healthcare, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Manor Care Rehab Decatur.

17) Separate Defendant HCR Manor Care Services, Inc. is an Ohio corporation with its principal place of business at 333 North Summit Street, Toledo, Ohio, 43604-2617. The agent for service for HCR Manor Care Services, Inc. is CT Corporation System, 1300 E. 9th Street, Cleveland, Ohio, 44114. HCR Manor Care Services, Inc. was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Manor Care Rehab Decatur.

18) Separate Defendant Heartland Employment Services, LLC is an Ohio corporation with its principal place of business at 333 North Summit Street, Toledo, Ohio, 43604-2617. The agent for service for Heartland Employment Services, LLC is CT Corporation System, 707 Virginia Street East, Charleston, West Virginia, 25301. Heartland Employment Services, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Manor Care Rehab Decatur.

19) Separate Defendant Manor Care Rehabilitation Center of Decatur GA, LLC is a Delaware corporation with its principal place of business at 333 North Summit Street, Toledo, Ohio, 43604-2617. The agent for service for Manor Care Rehabilitation

Center of Decatur GA, LLC is Corporation Process Company, 2180 Satellite Blvd, Suite 400, Duluth, Georgia 30097. Manor Care Rehabilitation Center of Decatur GA, LLC was, and remains, a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at Manor Care Rehab Decatur.

20) Separate Defendants, Betsy Hill, material hereto is an administrator of Manor Care Rehab Decatur. Betsy Hill is a resident citizen of the State of Georgia. Defendant, Betsy Hill, for all times material to this lawsuit conducted business in Georgia and continues to do business in Georgia. Defendant Betsy Hill's contacts with Georgia are systematic and ongoing such that Defendant, Betsy Hill, could reasonably expect to be haled into a Georgia court.

21) Defendants, Drumm Investors, LLC, Beverly Enterprises, Inc., Golden Gate National Senior Care, LLC, GGNHC Holdings, LLC, GGNHC Clinical Services, LLC, GGNHC Administrative Services, LLC, GGNHC Decatur II, LLC, Golden Living Center Glenwood, and Alicia Holliday, and HCR ManorCare, LLC, HCR ManorCare, Inc., HCRMC Operations, LLC, HCR ManorCare Heartland, LLC, Manor Care, Inc., HCR Healthcare, LLC, HCR Manor Care Services, Inc., Heartland Employment Services, LLC, Manor Care Rehabilitation Center of Decatur GA, LLC, Manor Care Rehab Decatur, and Betsy Hill, are subject to the venue and jurisdiction of this Honorable Court, and are, for purposes of this action, considered to be joint tortfeasors for purposes of venue.

a) At all times material hereto, Defendants, Drumm Investors, LLC, Beverly Enterprises, Inc., Golden Gate National Senior Care, LLC, GGNHC Holdings, LLC, GGNHC Clinical Services, LLC, GGNHC Administrative Services, LLC, GGNHC Decatur II, LLC, Golden Living Center Glenwood, and Alicia Holliday and HCR ManorCare, LLC, HCR ManorCare, Inc., HCRMC Operations, LLC, HCR ManorCare Heartland, LLC, Manor Care, Inc., HCR Healthcare, LLC, HCR Manor Care Services, Inc., Heartland Employment Services, LLC, Manor Care Rehabilitation Center of Decatur GA, LLC, Manor Care Rehab Decatur, and Betsy Hill, were engaged in the business of owning, operating, and/or managing the nursing home facility known as Golden Living Center Glenwood and Manor Care Rehab Decatur respectively, and were responsible to the residents of its facility, including Vivian Rockymore, for the provision of her custodial care and treatment, and the provision of nursing home services, including, but not limited to, the provisions of residents' rights.

b) The duties Defendants, Drumm Investors, LLC, Beverly Enterprises, Inc., Golden Gate National Senior Care, LLC, GGNHC Holdings, LLC, GGNHC Clinical Services, LLC, GGNHC Administrative Services, LLC, GGNHC Decatur II, LLC, Golden Living Center Glenwood, and Alicia Holliday and HCR ManorCare, LLC, HCR ManorCare, Inc., HCRMC Operations, LLC, HCR ManorCare Heartland, LLC, Manor Care, Inc., HCR Healthcare, LLC, HCR Manor Care Services, Inc., Heartland Employment Services, LLC, Manor Care Rehabilitation Center of Decatur GA, LLC, Manor Care Rehab Decatur, and Betsy Hill, owed to Vivian Rockymore while she was a resident at their respective facility included the duty to provide her with that degree of care, skill, and diligence usually exhibited by nursing homes generally in the community, and the duties set forth in Bill of Rights for Residents of Long-Term Care Facilities as set forth in [O.C.G.A. §§ 31-8-104 through 31-8-121](#).

c) Pursuant to [O.C.G.A. § 9-11-9.1\(a\)](#), to the extent that statute may even apply to this action, attached hereto and incorporated herein as *Exhibit "C"*, are the Affidavits of Charlotte Sheppard, RN, who is qualified as an expert witness on the issues raised in this Complaint. The Affidavit specifies at least one negligent act or omission on the part of Defendants, Drumm Investors, LLC, Beverly Enterprises, Inc., Golden Gate National Senior Care, LLC, GGNHC Holdings, LLC, GGNHC Clinical Services, LLC, GGNHC Administrative Services, LLC, GGNHC Decatur II, LLC, Golden Living Center Glenwood, and Alicia Holliday, and HCR ManorCare, LLC, HCR ManorCare, Inc., HCRMC Operations, LLC, HCR ManorCare Heartland, LLC, Manor Care, Inc., HCR Healthcare, LLC, HCR Manor Care Services, Inc., Heartland Employment Services, LLC, Manor Care Rehabilitation Center of Decatur GA, LLC, Manor Care Rehab Decatur, and Betsy Hill, and/or their staff, and the factual basis for such negligent act or omission that caused injury to Vivian Rockymore. The Affidavit is not inclusive of each act, error, or omission that has been committed, or may have been committed by the Defendants and Plaintiff reserves the right to contend and prove additional acts, errors, and omissions on the part of Defendants that reflect a departure from the requisite standard of care required by law.

22)Whenever the term “Defendants” is utilized within this suit, such term collectively refers to and includes all named Defendants in this lawsuit.

23)Whenever the term “Nursing Home Defendants” is utilized within this suit, such term collectively refers to and includes Drumm Investors, LLC, Beverly Enterprises, Inc., Golden Gate National Senior Care, LLC, GGNSC Holdings, LLC, GGNSC Clinical Services, LLC, GGNSC Administrative Services, LLC, GGNSC Decatur II, LLC, and Golden Living Center Glenwood, and HCR ManorCare, LLC, HCR ManorCare, Inc., HCRMC Operations, LLC, HCR ManorCare Heartland, LLC, Manor Care, Inc., HCR Healthcare, LLC, HCR Manor Care Services, Inc., Heartland Employment Services, LLC, Manor Care Rehabilitation Center of Decatur GA, LLC, and Manor Care Rehab Decatur.

24)Whenever the term “Administrator Defendant” is utilized within this suit, such term refers to Alicia Holliday.

25)Separate Defendant Drumm Investors, LLC, Beverly Enterprises, Inc., Golden Gate National Senior Care, LLC, GGNSC Holdings, LLC, GGNSC Clinical Services, LLC, GGNSC Administrative Services, LLC, GGNSC Decatur II, LLC, and Golden Living Center Glenwood HCR ManorCare, LLC, HCR ManorCare, Inc., HCRMC Operations, LLC, HCR ManorCare Heartland, LLC, Manor Care, Inc., HCR Healthcare, LLC, HCR Manor Care Services, Inc., Heartland Employment Services, LLC, Manor Care Rehabilitation Center of Decatur GA, LLC, Manor Care Rehab Decatur, and Betsy Hill, own, operate, manage, and/or control nursing homes throughout Georgia including, but not limited to, DeKalb County. All corporate Defendants have regular and continuous business in DeKalb County. Defendants were, and remain, owners and/or managers of an institution, residence or place which is advertised, offered, maintained or operated for the express or implied purpose of providing accommodations and care, for a period of more than twenty-four hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation in DeKalb County.

26)Jurisdiction of this Court is proper in the DeKalb County Circuit Court in that the amount in controversy, exclusive of interest and costs, far exceeds the minimum jurisdictional limits of this Court.

FACTUAL SUMMARY

27)On or about April 6, 2007, Vivian Rockymore at the age of 72 was admitted to Golden Living Center Glenwood, and she remained a resident of the nursing home until on or about February 28, 2013, then was admitted to Manor Care Rehab Decatur on or about March 15, 2013, where she remained a resident of the nursing home until on or about May 18, 2013, and died on May 18, 2013 as a result of the injuries she suffered at Defendants' facilities.

28)Defendants were well aware of Vivian Rockymore's medical condition and the care that she required when they represented that they could adequately care for her needs. Defendants made affirmative representations to the family that the appropriate level of care would be provided when the Defendants knew, because of budgetary restrictions on staffing and supplies, that residents, including Vivian Rockymore, would not get the necessary care.

29) Defendants held themselves out as being:

- a) Skilled in the performance of nursing, rehabilitative and other medical support services;
- b) Properly staffed, supervised, and equipped to meet the total needs of its nursing home residents;
- c) Providing around the clock skilled nursing care;
- d) Able to specifically meet the total nursing home, medical, and physical therapy needs of Vivian Rockymore and other residents like her; and,

e) Licensed and complying on a continual basis with all rules, regulations, and standards established for nursing homes, nursing home licensees and nursing home administrators.

30)Defendants failed to discharge their obligations of care to Vivian Rockymore. As a consequence thereof, Vivian Rockymore suffered catastrophic injuries, disfigurement, extreme pain, suffering, and mental anguish. The scope and severity of the recurrent wrongs inflicted upon Vivian Rockymore while under the care of the facility accelerated the deterioration of her health and physical condition beyond that caused by the normal aging process and resulted in physical and emotional trauma which includes, but is not limited to:

(a) Golden Living Center Glenwood:

(i) Pressure Sores;

(ii) Falls;

(iii) Fractures;

(iv) Malnutrition;

(v) Dehydration; and

(vi) Death.

(b) Manor Care Rehab Decatur:

(i) Dehydration;

(ii) Urinary Tract Infections;

(iii) Malnutrition;

(iv) Sepsis; and

(v) Death.

31)All of the above identified injuries, as well as the conduct specified below, caused Vivian Rockymore to lose her personal dignity and extreme and unnecessary pain, degradation, anguish, otherwise unnecessary hospitalizations, disfigurement, and emotional trauma.

32)The wrongs complained of herein were of a continuing nature, and occurred throughout Vivian Rockymore's residency at Defendants' facility.

33)Defendants were aware of the systemic staffing problems at Golden Living Center Glenwood and Manor Care Rehab Decatur throughout the residency of Vivian Rockymore via Summary Labor Reports which were available at all levels of Defendants' corporate structure, these staffing failures directly impacted the care to the residents, including Vivian Rockymore.

34)Defendants were aware of the systemic problems within Golden Living Center Glenwood and Manor Care Rehab Decatur relating to resident care, specifically including: falls, pressure sores, weight loss, dehydration, contractures, use of psychotropic medications, and restraints. These care based indicators were specifically selected after extensive research as indicators of the quality of care being provided to the residents including Vivian Rockymore. These quality indicators were monitored and available to the Defendants via monthly if not weekly reports.

35)Defendants' upper level management conducted regular meetings for its different areas of operations including Georgia. These meetings kept all Defendants informed of the systemic problems at Golden Living Center Glenwood and Manor Care Rehab Decatur and the other facilities in Georgia.

36)Plaintiff alleges that on all of the occasions complained of herein, Vivian Rockymore was under the care, supervision, and treatment of the agents and/or employees of Defendants and that the injuries complained of herein were proximately caused by the acts and omissions of Defendants named herein.

37)Defendants had vicarious liability for the acts and omissions of all persons or entities under Defendants' control, either directly or indirectly, including its employees, agents, consultants, and independent contractors, whether in-house or outside entities, individuals, agencies, or pools causing or contributing to the injuries of Vivian Rockymore.

38) The Defendants are directly liable for the acts and/or omissions contained herein due to the direct control, ownership, and/or management of the operations of Golden Living Center Glenwood and Manor Care Rehab Decatur. This exertion of control, ownership, and/or management by the Defendants created a dangerous environment, for all residents, including Vivian Rockymore.

39)The Defendants were aware of the dangerous environment that was created by their methods of management and/or control at all their facilities, including Golden Living Center Glenwood and Manor Care Rehab Decatur and the harm caused to the residents, including Vivian Rockymore.

40)This methodology of management and/or control was set out in the Corporate Plan created and/or implemented executives of the Nursing Home Defendants.

41)Defendants have joint and several liability for the actions complained of herein because they consciously and deliberately pursued a common plan or design to commit the tortious acts described in this Complaint and these Defendants actively took part in such actions.

**COUNT ONE: CORPORATE NEGLIGENCE AGAINST NURSING HOME DEFENDANTS;
JOHN DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10**

(For Non-lethal Injuries)

42) Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

43)Nursing Home Defendants owed a duty to residents, including Vivian Rockymore, to act in a manner consistent with the proper operation of the nursing homes they controlled, which a reasonably careful person/corporation would provide under similar circumstances.

44)Nursing Home Defendants' employees owed a duty to residents, including Vivian Rockymore, to exercise reasonable care in providing oversight and management of the nursing homes they owned, operated, managed, and/or controlled.

45)Nursing Home Defendants breached this duty by failing to properly manage, operate, and/or control these nursing homes, including Golden Living Center Glenwood and Manor Care Rehab Decatur, in a manner that a reasonably careful person/corporation would have provided under similar circumstances and by failing to properly allocate resources, provide appropriate policies and procedures, take appropriate corrective action when operational problems are brought to their attention, intentionally concealing the severity and existence of these failures from affected residents, intentionally concealing the severity and existence of these failures from the State and Federal Government.

46) The negligence of the Nursing Home Defendants, their employees, agents and consultants, includes, but is not limited to, one or more of the following acts and omissions:

a) Staffing

i) Nursing home residents, including Vivian Rockymore, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to provide for the needs of their residents.

ii) The Corporate Defendants are responsible and required to provide sufficient resources to hire and maintain sufficient staff to ensure that these residents' needs are met.

iii) Additionally, when the Corporate Defendants fail to provide sufficient resources to hire and maintain sufficient staff, the staff who are present are unable to meet the total needs of the residents through no fault of their own.

iv) When the Corporate Defendants fail to provide sufficient resources to hire and maintain sufficient staff, those who are present must take shortcuts with respect to all aspects of their job and are unable to do their job.

v) Rather than hiring and maintaining sufficient staff, Separate Defendants hired too few registered nurses, too few LPNs, and too few certified nursing assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to properly care for the residents who depended upon them, or because of deplorable working conditions, or because the pay set by these Corporate Defendants was too low, or such other reasons as will be proven at trial of this matter.

b) Corporate Defendants failed to implement adequate guidelines, policies and procedures for:

i) Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Golden Living Center Glenwood and Manor Care Rehab Decatur by the Georgia Office of Health Facility Licensure and Certification or any state or federal survey agency;

ii) Determining the cause of any such deficiencies, violations or penalties; and

iii) Correcting deficiencies or licensure violations or penalties found to exist at Golden Living Center Glenwood and Manor Care Rehab Decatur;

iv) Notifying residents affected by and those potentially affected by deficiencies cited by any state or federal survey agency.

c) Adopting adequate guidelines, policies, and procedures for determining whether Golden Living Center Glenwood and Manor Care Rehab Decatur had sufficient numbers of nursing personnel to:

i) Provide 24-hour compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations;

ii) To correct and address any and all failures to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

d) Corporate Defendants failed to adopt adequate guidelines, policies, and procedures of Golden Living Center Glenwood and Manor Care Rehab Decatur for documenting; maintaining files; investigating and responding to any complaint regarding compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations by employees at Golden Living Center Glenwood and Manor Care Rehab Decatur regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and **neglect** to residents of the facility, including Vivian Rockymore.

e) Budgeting or Allocation of Resources

i) Corporate Defendants were responsible for providing accurate information regarding the monetary needs of the facility so that a workable budget could be set.

ii) Corporate Defendants were required to administer Golden Living Center Glenwood and Manor Care Rehab Decatur in a manner that enabled it to use resources effectively and efficiently to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iii) Corporate Defendants were responsible for allocating funds within the budget in a manner that ensured that compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv) Corporate Defendants failed to properly allocate the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, resulting in the following:

(1) Staffing levels that were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each residents, including Vivian Rockymore, and

(2) Supplies and food were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Vivian Rockymore.

v) Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Corporate Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Corporate Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi) The failure to adequately budget and allocate resources to the facility directly caused damages to Vivian Rockymore.

f) Corporate Compliance and Reporting

i) Corporate Defendants were responsible for ensuring that the facility complied with state and federal standards as to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii) Corporate Defendants were charged with the responsibility of reporting instances of noncompliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Vivian Rockymore.

iii) Upon information and belief, Plaintiff alleges that Corporate Defendants failed to properly recognize and report instances of non-compliance occurring at Golden Living Center Glenwood and Manor Care Rehab Decatur, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Vivian Rockymore to place her in the facility and misled them as to the facility's compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Vivian Rockymore.

iv) Corporate Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that did not comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Upon information and belief, Corporate Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility.

v) The failure to adequately comply with and report violations of state and federal standards directly caused harm to Vivian Rockymore.

47) A reasonably careful Corporation, operating under similar circumstances, would foresee that the failure to provide the appropriate oversight, management, direction, and/or control would result in poorly operated nursing homes such as Golden Living Center Glenwood and Manor Care Rehab Decatur and devastating injuries to residents including Vivian Rockymore.

48) As a direct and proximate result of the negligence of Nursing Home Defendants as set out above, Vivian Rockymore suffered injuries including; at Golden Living Center Glenwood: pressure sores, falls, fractures, malnutrition; at Manor Care Rehab Decatur: dehydration, urinary tract infections, malnutrition, sepsis, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Vivian Rockymore to incur significant hospital and medical expenses.

49) WHEREFORE, based on such conduct of Nursing Home Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Nursing Home Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, disfigurement, and fright in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

**COUNT TWO: NEGLIGENCE CLAIM AGAINST ADMINISTRATOR
DEFENDANTS, AND JOHN DOES 1 THROUGH 10**

50) Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

51) Upon information and belief, Administrator Defendants, John Does 1 through 10, were the administrators of Golden Living Center Glenwood and Manor Care Rehab Decatur during the residency of Vivian Rockymore. To the extent the names of the licensed administrators who may have managed this facility during the residency of Vivian Rockymore are determined, all of the following acts are properly attributed to them and Plaintiff will seek leave to substitute these individuals as proper party Defendants.

52) As nursing home administrators, Administrator Defendants owed a common law duty to act as reasonably prudent nursing home administrators and to prevent all reasonably foreseeable injuries to the residents of Golden Living Center Glenwood and Manor Care Rehab Decatur.

53)As nursing home administrators, Administrator Defendants owed a common law duty to remain informed as to events occurring at Golden Living Center Glenwood and Manor Care Rehab Decatur through contact with the various departments that they managed, including, but not limited to, nursing, dietary, therapy, housekeeping, social services, and maintenance. Administrator Defendants were required under law to be aware of matters occurring at the nursing home and to take affirmative steps to correct problems, particularly when those problems could reasonably cause or contribute to an injury, abuse or **neglect** to residents of the home.

54)When Administrator Defendants accepted the position of administrator of Golden Living Center Glenwood and Manor Care Rehab Decatur they assumed the duties as set forth in the preceding paragraphs.

55) It is reasonably foreseeable that injuries, abuse and **neglect** to residents of Golden Living Center Glenwood and Manor Care Rehab Decatur, including Vivian Rockymore, would occur as a direct result of Administrator Defendants' failures to carry out their duties as administrators of the facility.

56)As nursing home administrators, Administrator Defendants were centrally involved and actively participated in tortious conduct that directly caused or contributed to the injuries of Vivian Rockymore. The following areas describe with specificity the wrongdoings of Administrator Defendants that resulted in harm to Vivian Rockymore:

a) Staffing

i) Nursing home residents, including Vivian Rockymore, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to provide for the needs of their residents.

ii) The administrator is responsible and required to hire and maintain sufficient staff to ensure that these residents' needs are met. Further, the administrator must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.

iii) When the administrator, as here, fails to hire and maintain sufficient staff and fails to maintain proper working relationships between the departments of the facility, the residents do not receive adequate and appropriate care.

iv) Additionally, when the administrator fails to hire and maintain sufficient staff, the staff who are present are unable to meet the total needs of the residents through no fault of their own.

v) When the administrator fails to hire and maintain sufficient staff, those who are present must take shortcuts with respect to the care provided and are unable to provide adequate and appropriate care to the residents of the facility.

vi) Rather than hiring and maintaining sufficient staff Separate Defendants hired too few registered nurses, too few LPNs, and too few certified nurse assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to properly care for the residents who depended upon them, or because of deplorable working conditions, or because the pay set by the nursing home with the input of the administrator was too low, or such other reasons as will be proven at trial of this matter.

vii) Separate Defendants failed to develop and maintain proper working relationships between physicians, nurse practitioners and employees of the facility, and between the various departments they managed. Vivian Rockymore was injured through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.

viii)Due to staff shortages at Golden Living Center Glenwood and Manor Care Rehab Decatur, Vivian Rockymore's medical records were not kept and maintained in accordance with accepted professional standards and practices. This incomplete

documentation resulted in further injuries to Vivian Rockymore—the facility was unable to properly understand her condition, changes that occurred in her condition, and whether or not her care plan and dietary assessments were properly modified to address changes in her condition.

ix) Separate Defendants owed a non-delegable duty to Vivian Rockymore and other residents of Golden Living Center Glenwood and Manor Care Rehab Decatur, during their tenure as administrators, to ensure adequate and appropriate custodial care and supervision through their control over staffing issues. A reasonably prudent nursing home administrator would have known or should have known that injuries would occur to residents such as Vivian Rockymore if staffing levels were not maintained within reasonable parameters.

x) With respect to staffing, the failures of Separate Defendants include but are not limited to:

- (1) Ensuring that the staff provided Vivian Rockymore adequate hygiene and sanitary care;
 - (2) Ensuring that the staff provided Vivian Rockymore clean bed linens to prevent urine and fecal contact for extended periods of time;
 - (3) Providing sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (nursing personnel) to meet the total needs of Vivian Rockymore throughout her residency;
 - (4) Ensuring that Vivian Rockymore:
 - (a) Received timely and accurate care assessments;
 - (b) Received prescribed treatment, medication and diet; and
 - (c) Was protected from accidental or intentional injuries by the correct use of ordered and reasonable safety measures and proper supervision of staff and other residents;
 - (5) Keeping Vivian Rockymore clean and comfortable and to prevent the formation of bedsores, ulcers and lesions on her body;
 - (6) Providing a safe environment free from preventable abuse and **neglect**;
 - (7) Ensuring that Vivian Rockymore received care, treatment and medication in accordance with physician's orders; and
 - (8) Ensuring that Vivian Rockymore was provided with the dignity and respect that all nursing home residents are entitled to receive.
- xi) Adequately screen, evaluate and check references, test for competence, and use ordinary care in selecting nursing personnel to work at Golden Living Center Glenwood and Manor Care Rehab Decatur;
- xii) Terminating employees at Golden Living Center Glenwood and Manor Care Rehab Decatur that were known (or should have been known) to be careless, incompetent and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated and adopted by the Georgia Division of Health;
- xiii) Assigning nursing personnel at Golden Living Center Glenwood and Manor Care Rehab Decatur consistent with their education and experience and based on:
- (1) Vivian Rockymore's medical history and condition, nursing and rehabilitative needs;

- (2) The characteristics of the resident population residing in the area of the facility where Vivian Rockymore was a resident; and
- (3) Nursing skills needed to provide care to such resident population.

b) Separate Defendants failed to implement adequate guidelines, policies and procedures for:

- i) Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Golden Living Center Glenwood and Manor Care Rehab Decatur by any state or federal survey agency;

- ii) Determining the cause of any such deficiencies, violations or penalties; and

- iii) Correcting deficiencies or licensure violations or penalties found to exist at Golden Living Center Glenwood and Manor Care Rehab Decatur.

c) Adopting adequate guidelines, policies, and procedures for determining whether Golden Living Center Glenwood and Manor Care Rehab Decatur had sufficient numbers of nursing personnel to:

- i) Provide 24-hour nursing services;

- ii) Meet the needs of residents who reside at the facility, including Vivian Rockymore; and

- iii) Meet the total nursing needs of residents, including their activities of daily living.

d) Separate Defendants failed to adopt adequate guidelines, policies, and procedures of Golden Living Center Glenwood and Manor Care Rehab Decatur for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees at Golden Living Center Glenwood and Manor Care Rehab Decatur regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and **neglect** to residents of the facility, including Vivian Rockymore.

e) Separate Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care at Golden Living Center Glenwood and Manor Care Rehab Decatur.

f) Separate Defendants failed to ensure that Vivian Rockymore attained and maintained her highest level of physical, mental and psychosocial well-being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to Vivian Rockymore.

g) Budgeting or Allocation of Resources

- i) As administrators, Separate Defendants were responsible for providing accurate information regarding the monetary needs of the facility to the owners of the nursing home so that a workable budget could be set.

- ii) As administrators, Separate Defendants were required to administer Golden Living Center Glenwood and Manor Care Rehab Decatur in a manner that enabled it to use resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident.

- iii) As administrators, Separate Defendants were responsible for allocating funds within the budget provided them by the owners of the nursing home in a manner that ensured that the needs of the residents, including Vivian Rockymore, were met.

iv) Separate Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for the proper care of its residents, resulting in the following:

(1) Staffing levels that were insufficient to attain or maintain the highest practicable physical, mental and psychosocial well-being of each residents, including Vivian Rockymore, and

(2) Shortages of supplies and food necessary to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, including Vivian Rockymore.

v) Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Separate Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Separate Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of providing adequate and appropriate care to the residents.

vi) The failure to adequately budget and allocate resources to the facility directly caused damages to Vivian Rockymore.

h) Corporate Compliance and Reporting

i) As administrators of Golden Living Center Glenwood and Manor Care Rehab Decatur, Separate Defendants were responsible for ensuring that the facility complied with state and federal standards in providing care to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii) As administrators, Separate Defendants were charged with the responsibility of reporting instances of abuse and **neglect** that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Vivian Rockymore.

iii) Upon information and belief, Plaintiff alleges that Separate Defendants failed to properly recognize and report instances of non-compliance occurring at Golden Living Center Glenwood and Manor Care Rehab Decatur, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Vivian Rockymore to place her in the facility and misled them as to the care she would receive at the facility. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Vivian Rockymore.

iv) Separate Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that failed to meet required standards. Upon information and belief, Separate Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of Vivian Rockymore's admissions agreement.

v) The failure to adequately comply with and report violations of state and federal standards directly caused harm to Vivian Rockymore.

57) A reasonably careful nursing home administrator would have foreseen that the failure to provide the ordinary care listed above would result in devastating injuries to Vivian Rockymore.

58)As a direct and proximate result of these Administrator Defendants' failure to perform the responsibilities as set forth above, Vivian Rockymore suffered injuries, including; at Golden Living Center Glenwood: pressure sores, falls, fractures, malnutrition; at Manor Care Rehab Decatur: dehydration, urinary tract infections, malnutrition, sepsis, and also suffered extreme pain, suffering, mental anguish, embarrassment, disfigurement, fright, all of which required hospitalization and medical treatment, and all of which required Vivian Rockymore to incur significant hospital and medical expenses.

59)WHEREFORE, based on such conduct of Administrator Defendants as set out above, Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Administrator Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, disfigurement, and fright in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

**COUNT THREE: STATUTORY CAUSE OF ACTION BROUGHT PURSUANT TO THE PROVISION
OF THE BILL OF RIGHTS FOR RESIDENTS OF LONG-TERM CARE FACILITIES NURSING HOME
DEFENDANTS; JOHN DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10**

(Georgia Code § 31-8-100 et sec)

(For Non-lethal Injuries)

60) Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

61)Nursing Home Defendants owed a duty to residents, including Vivian Rockymore, comply with any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, and shall be liable to the resident for injuries suffered.

62)Nursing Home Defendants' employees owed a duty to residents, including Vivian Rockymore, to comply with [Georgia Code § 31-8-100](#) et sec, any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation.

63)Nursing Home Defendants breached this duty by depriving residents including Vivian Rockymore of rights and benefits created or established for the well-being of the residents by the terms of applicable contracts, by any state statutes and rules, and by applicable federal statutes and regulations and by failing to prevent the mistreatment, abuse and **neglect** of Vivian Rockymore.

64)These breaches were due to the use of improper management styles and systems that were enacted and implemented by the Nursing Home Defendants without consideration of the impact that such improper management styles and systems would have on the residents including Vivian Rockymore.

65)Nursing Home Defendants were centrally involved and actively participated in tortious conduct that directly caused and/or contributed to the injuries of Vivian Rockymore. The following areas describe with specificity the wrongdoings and/or negligent actions of the Nursing Home Defendants that resulted in harm to Vivian Rockymore:

a) Staffing

i) Nursing home residents, including Vivian Rockymore, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

ii) The Nursing Home Defendants are responsible and required to hire and maintain sufficient staff to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, the Nursing Home Defendants must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.

iii) When the Nursing Home Defendants, as here, fail to hire and maintain sufficient staff and fail to maintain proper working relationships between the departments of the facility, the Nursing Home Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

iv) Additionally, when the Nursing Home Defendants fail to hire and maintain sufficient staff, the staff who are present are unable to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through no fault of their own.

v) When the Nursing Home Defendants fail to hire and maintain sufficient staff, those who are present must take shortcuts with respect to compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations and were unable to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi) Rather than hiring and maintaining sufficient staff, Nursing Home Defendants hired too few registered nurses, too few LPNs, and too few certified nurse assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, or because of deplorable working conditions, or because the pay set by the Nursing Home Defendants was too low, or such other reasons as will be proven at trial of this matter.

vii) Nursing Home Defendants failed to develop and maintain proper working relationships between physicians, nurse practitioners and employees of the facility, and between the various departments they managed. Nursing Home Defendants failed to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.

viii) Due to staff shortages at Golden Living Center Glenwood and Manor Care Rehab Decatur, Vivian Rockymore's medical records were not kept and maintained in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

ix) Nursing Home Defendants owed a non-delegable duty to Vivian Rockymore and other residents of Golden Living Center Glenwood and Manor Care Rehab Decatur, to ensure compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations through their control over staffing issues. A reasonably prudent nursing home operator would have known or should have known that injuries would occur to residents such as Vivian Rockymore if staffing levels were not maintained within reasonable parameters and comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

x) Ensuring that Vivian Rockymore was provided with the dignity and respect that all nursing home residents are entitled to receive;

xi) Adequately screen, evaluate and check references, test for competence, and use ordinary care in selecting nursing personnel to work at Golden Living Center Glenwood and Manor Care Rehab Decatur;

xii) Terminating employees at Golden Living Center Glenwood and Manor Care Rehab Decatur that were known (or should have been known) to be careless, incompetent and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated and adopted by the State and Federal governments;

b) Nursing Home Defendants failed to implement adequate guidelines, policies and procedures for:

- i) Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Golden Living Center Glenwood and Manor Care Rehab Decatur by any state or federal survey agency;
- il) Determining the cause of any such deficiencies, violations or penalties; and
- iii) Correcting deficiencies or licensure violations or penalties found to exist at Golden Living Center Glenwood and Manor Care Rehab Decatur.
- c) Adopting adequate guidelines, policies, and procedures for determining whether Golden Living Center Glenwood and Manor Care Rehab Decatur had sufficient numbers of nursing personnel to:
 - i) Provide 24-hour compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations;
 - ii) To correct and address any and all failures to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
- d) Nursing Home Defendants failed to adopt adequate guidelines, policies, and procedures of Golden Living Center Glenwood and Manor Care Rehab Decatur for documenting; maintaining files; investigating and responding to any complaint regarding compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations by employees at Golden Living Center Glenwood and Manor Care Rehab Decatur regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. This failure resulted in injury, abuse and **neglect** to residents of the facility, including Vivian Rockymore.
- e) Nursing Home Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations at Golden Living Center Glenwood and Manor Care Rehab Decatur.
- f) Nursing Home Defendants failed to ensure that Vivian Rockymore attained and maintained her highest level of psychosocial well-being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to Vivian Rockymore.
- g) Budgeting or Allocation of Resources
 - i) Nursing Home Defendants were responsible for providing accurate information regarding the monetary needs of the facility so that a workable budget could be set.
 - ii Nursing Home Defendants were required to administer Golden Living Center Glenwood and Manor Care Rehab Decatur in a manner that enabled it to use resources effectively and efficiently to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
 - iii) Nursing Home Defendants were responsible for allocating funds within the budget in a manner that ensured that compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.
 - iv) Nursing Home Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations, resulting in the following:

(1) Staffing levels that were insufficient to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each residents, including Vivian Rockymore, and

(2) Shortages of supplies and food necessary to comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations for each resident, including Vivian Rockymore.

v) Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Nursing Home Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Nursing Home Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations.

vi) The failure to adequately budget and allocate resources to the facility directly caused damages to Vivian Rockymore.

h) Corporate Compliance and Reporting

i) Nursing Home Defendants were responsible for ensuring that the facility complied with state and federal standards as to the residents of the home. To that end, they were required to file various reports with regulatory entities.

ii) Nursing Home Defendants were charged with the responsibility of reporting instances of noncompliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Vivian Rockymore.

iii) Upon information and belief, Plaintiff alleges that Defendants failed to properly recognize and report instances of non-compliance occurring at Golden Living Center Glenwood and Manor Care Rehab Decatur, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. This false and misleading appearance induced the family of Vivian Rockymore to place her in the facility and misled them as to the facility's compliance with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Vivian Rockymore.

iv) Nursing Home Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that did not comply with all contracts, all state statutes or rules, and/or all applicable federal statutes or regulations. Upon information and belief, Nursing Home Defendants submitted inaccurate claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of Vivian Rockymore's admissions agreement.

v) The failure to adequately comply with and report violations of state and federal standards directly caused harm to Vivian Rockymore.

66) A reasonably careful nursing home, operating under similar circumstances, would foresee that the failure to comply with Georgia Code § 31 -8-1 00 et. sec. would result in devastating injuries to Vivian Rockymore.

67)As a direct and proximate result of the Nursing Home Defendants' failures as set out above, Vivian Rockymore suffered injuries, including; at Golden Living Center Glenwood: pressure sores, falls, fractures, malnutrition; at Manor Care Rehab Decatur: dehydration, urinary tract infections, malnutrition, sepsis, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Vivian Rockymore to incur significant hospital and medical expenses.

68)WHEREFORE, based on such conduct of Nursing Home Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages, punitive damages and injunctive relief against Nursing Home Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, loss of enjoyment of life, humiliation, disfigurement, and fright in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

**COUNT FOUR: MEDICAL MALPRACTICE AGAINST NURSING HOME DEFENDANTS;
JOHN DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10**

(For Non-lethal Injuries)

69)Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

70)Separate Defendants owed a duty to residents, including Vivian Rockymore, to hire, train, and supervise employees so that such employees delivered care and services to residents in a safe and beneficial manner.

71)Separate Defendants' employees owed a duty to residents, including Vivian Rockymore, to render care and services as a reasonably prudent and similarly situated nursing home employee would render, including, but not limited to, rendering care and services in a safe and beneficial manner.

72)Separate Defendants owed a duty to assist all residents, including Vivian Rockymore in attaining and maintaining the highest level of physical, mental, and psychosocial well-being.

73)Defendants failed to meet the standard of care and violated its duty of care to Vivian Rockymore through mistreatment, abuse and **neglect**. The negligence of Defendants, their employees, and consultants, includes, but is not limited to, one or more of the following acts and omissions:

- a) The failure to properly notify a doctor upon significant changes in Vivian Rockymore's condition;
- b) The failure to respond to significant signs and symptoms of change in the condition of Vivian Rockymore;
- c) The failure to adequately and timely assess, monitor and/or treat the development and progression of pressure sores and infection in Vivian Rockymore;
- d) The failure to properly assess Vivian Rockymore's reasonable risk of development of pressure sores and infections;
- e) The failure to develop, implement, and update an adequate and appropriate resident care plan to meet the needs of Vivian Rockymore;
- f) The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in Vivian Rockymore's condition;
- g) The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (hereinafter "nursing personnel") to meet the total needs of Vivian Rockymore;

- h) The failure to increase the number of nursing personnel to ensure that Vivian Rockymore:
 - i) received timely and accurate care assessments;
 - ii) received prescribed treatment, medication, and diet;
 - iii) received necessary supervision; and
 - iv) received timely nursing and medical intervention due to a significant change in condition.
- i) The failure to provide nursing personnel sufficient in number to provide proper treatment and assessment to Vivian Rockymore and other residents in order to protect Vivian Rockymore's skin integrity and to prevent the formation of pressure sores;
- j) The failure to provide nursing personnel sufficient in number to ensure that Vivian Rockymore attained and maintained her highest level of physical, mental and psychosocial well-being;
- k) The failure to provide adequate supervision to the nursing staff so as to ensure that Vivian Rockymore received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments, medications, and skin care to prevent the formation of pressure sores, to prevent infection, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Vivian Rockymore;
- l) The failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure the Vivian Rockymore received appropriate nursing care, in accordance with Defendants' policy and procedures manual, and the statutorily mandated regulations implemented by the State and Federal governments;
- m) The failure to provide a nursing staff that was properly staffed, qualified, and trained;
- n) The failure to provide and ensure an adequate nursing care plan based on the needs of Vivian Rockymore;
- o) The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Vivian Rockymore changed;
- p) The failure to implement and ensure that an adequate nursing care plan for Vivian Rockymore was followed by nursing personnel;
- q) The failure to adopt adequate guidelines, policies, and procedures for documenting, maintaining files, investigating, and responding to any complaint regarding the quantity of resident care, the quality of resident care, or misconduct by employees, irrespective of whether such complaint derived from a state survey agency, a resident of said facility, an employee of the facility or any interested person;
- r) The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;
- s) The failure to properly assess Vivian Rockymore for the risk of development of pressure sores and infection;
- t) The failure to provide a proper mattress and bedding for Vivian Rockymore, protective devices and pressure relief devices;
- u) The failure to provide Vivian Rockymore with adequate and appropriate wound care, including timely dressing changes, so as to prevent the aggravation and deterioration of pressure sores on her body;

- v) The failure to provide Vivian Rockymore with adequate and appropriate care so as to prevent the development, aggravation and progression of infection;
- w) The failure to provide Vivian Rockymore with adequate and appropriate observation and examination so as to timely and adequately intervene to prevent the development, aggravation and progression of infection;
- x) The failure to provide Vivian Rockymore with adequate and appropriate nursing care, treatments and medication for pressure sores after development over the body of Vivian Rockymore;
- y) The failure to provide Vivian Rockymore with adequate and appropriate nursing care, treatments and medication for infection after the development of infection in the body of Vivian Rockymore;
- z) The failure to provide care, treatment, and medication in accordance with physician's orders;
- aa)The failure to provide Vivian Rockymore with adequate and appropriate assessment for fluid management to prevent dehydration;
- bb)The failure to maintain an adequate and appropriate fluid maintenance program;
- cc)The failure to ensure that Vivian Rockymore received adequate assessment of her nutritional needs;
- dd)The failure to maintain medical records on Vivian Rockymore in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:
 - i) the diagnosis of Vivian Rockymore;
 - ii) the treatment of Vivian Rockymore; and
 - iii) the assessment and establishment of appropriate plans of care and treatment.
- ee)The failure to adequately and appropriately monitor Vivian Rockymore and recognize significant changes in her health status; and
- ff) The failure to prevent Vivian Rockymore from developing pressure sores, weight loss, contractures, falls, infections.

74)A reasonably prudent nursing home, operating under the same or similar conditions, would not have failed to provide the care listed in the above complaint. Each of the foregoing acts of negligence on the part of Defendants was a proximate cause of Vivian Rockymore's injuries. Vivian Rockymore's injuries were all foreseeable to Defendants.

75)Defendants' conduct in breaching the duties owed to Vivian Rockymore was negligent, grossly negligent, willful, wanton, malicious and reckless.

76)As a direct and proximate result of such negligent, grossly negligent, willful, wanton, reckless and malicious conduct, Vivian Rockymore suffered injuries, including; at Golden Living Center Glenwood: pressure sores, falls, fractures, malnutrition; at Manor Care Rehab Decatur: dehydration, urinary tract infections, malnutrition, sepsis, and also suffered extreme pain, suffering, mental anguish, embarrassment, and fright all of which required hospitalization and medical treatment, and required Vivian Rockymore to incur significant hospital and medical expenses.

77)WHEREFORE, based on such conduct of Defendants as set forth above, Plaintiff asserts a claim for judgment for all compensatory damages and punitive damages against Defendants including, but not limited to, medical expenses, physical pain, suffering, mental anguish, disability, disfigurement, loss of enjoyment of life, humiliation, and fright in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

**COUNT FIVE: FRAUD AGAINST NURSING HOME DEFENDANTS: JOHN
DOES 1 THROUGH 10 AND UNIDENTIFIED ENTITIES 1 THROUGH 10**

78)Plaintiff re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

79)On or about May 4, 2010, Vivian Rockymore was admitted to Golden Living Center Glenwood and Manor Care Rehab Decatur, a nursing home owned and operated by the Defendants. Based on information and belief during this admission process of Vivian Rockymore, Nursing Home Defendants made specific representations by and through their agent that would provide Vivian Rockymore with the care and treatment that she required based on her needs.

80)During the admission process the Nursing Home Defendants made specific representations to Vivian Rockymore and her family via the admission agreement that is required by law. This admission agreement sets out that the facility will furnish general nursing care, personal assessment, social services, and such other personal services as may be required pursuant to the plan of care prepared by the Resident's physician and the facility. While Plaintiff does not specifically recall by name who explained and went over the admission information it is clear under current rules and regulations that the Defendants were obligated to perform the above referenced acts. Nursing Home Defendants knew or should have known at the time Vivian Rockymore was admitted that based on past experiences with other residents, communication with current and former employees, State and Federal Surveys, and multiple lawsuits alleging resident **neglect** that they would not be able to meet the needs of Vivian Rockymore or provide the level of care required pursuant to the plan of care prepared for Vivian Rockymore.

81)Additionally, during this admission process which occurred on or about April 6, 2007, the Nursing Home Defendants were required to provide specific information to Vivian Rockymore and her family as indicated in the admission agreement. Said information included upon information and belief included a Resident Handbook and a Resident/Patient Rights which contain additional representations made to Vivian Rockymore and her family as to the quality and quantity of services that would be provided to Vivian Rockymore during her residency.

82)Defendants, while claiming and/or implying special knowledge and holding themselves out as being a properly operated nursing home, concealed and misrepresented material facts from/to Vivian Rockymore and her family. Nursing Home Defendants specifically misrepresented that they could and would provide twenty four hour a day nursing care and supervision to Vivian Rockymore, when, in fact, Defendants knew that they would not do so and they were not sufficiently staffed or supplied to do so.

83)The relationship between Nursing Home Defendants and Vivian Rockymore and her family was one of trust and confidence, and Defendants had a higher duty to affirmatively speak the truth to Vivian Rockymore and her family because of Vivian Rockymore's age and infirmities. Defendants' fraudulent conduct includes, but is not limited to, the conduct described and set forth below.

84)Nursing Home Defendants engaged in intentional fraud by concealing or failing to disclose material facts within Defendants' knowledge, when Defendants knew that Vivian Rockymore and her family were ignorant of these material facts and did not have an equal opportunity to discover the truth. Specifically, Nursing Home Defendants misrepresented the material fact that they were willing to, and would, provide the proper care, treatment, and services to Vivian Rockymore, when in fact, Defendants knew that they would provide as little care, treatment, and services as possible in order to maximize Defendants' profits at the expense of Vivian Rockymore.

85)Further, Defendants intended to induce Vivian Rockymore and her family to take some action: to wit, to admit and then allow Vivian Rockymore to remain in Defendants' facility by concealing or failing to disclose the material facts that there was an epidemic of resident harm and injury, as well as a practice of utilizing insufficient numbers of nursing aides who were not qualified to render care or services in accordance with the law. As a proximate cause of the concealment and failure to disclose by Nursing Home Defendants, Vivian Rockymore and her family suffered injury as described herein.

86)Nursing Home Defendants perpetuated a continued concealment of the truth, throughout the duration of Vivian Rockymore's residency from April 6, 2007 through her discharge in May 18, 2013, related to the adequacy of the staffing and supplies available at the nursing home from which to provide care to Vivian Rockymore. During the time frame of Vivian Rockymore's residency the Nursing Home Defendants had information available indicating that they were insufficiently staffed and supplied to provide the care needed to Vivian Rockymore via:

- (a) Summary Labor reports;
- (b) Key Factor reports;
- (c) Quality Indicator reports;
- (d) Trend of Key Items reports;
- (e) Budget Variance reports;
- (f) Resident Census and Conditions of Residents reports;
- (g) State and Federal Surveys;
- (h) Labor Turnover reports;
- (i) 800 Hotline complaints;
- (j) Reports from consultants; and
- (k) Lawsuits and Jury awards;

87)Even when these deficiencies were brought to the attention of the Nursing Home Defendants they intentionally decided not to provide this information to Vivian Rockymore and/or her family. Nursing Home Defendants planned to bury this information and not make any information available to Vivian Rockymore, her family, any other resident or their families that would identify the residents including Vivian Rockymore in this horrific survey. These Defendants hid material information from residents and their families, including Vivian Rockymore, which would allow them to make informed decisions about the quality of care being provided to their loved ones including Vivian Rockymore and her family.

88)The failure to disclose special knowledge of the manner in which the Nursing Home Defendants operated the nursing home was an intentional concealment of the truth by these same Defendants. This intentional concealment by Nursing Home Defendants was a deliberate nondisclosure designed to prevent Vivian Rockymore and her family from learning the truth so that she would be admitted to and remain at the facility. See *Home Depot USA, Inc. v. Wabash National Corporation*, 314 Ga. App. 360 (2012).

89)Vivian Rockymore and her family relied on the Nursing Home Defendants as experts in the area of nursing home care and placed their trust and confidence in these same Defendants. Due to the material misrepresentations and continued concealment of the truth related to the quality and quantity of staffing and supplies Vivian Rockymore suffered damages.

90)As a consequence and as a proximate cause of the reliance on these misrepresentations, Vivian Rockymore and her family suffered damages and failed to receive the quality and quantity of care that was paid for.

91)WHEREFORE, based on such conduct of Defendants as set out above, Plaintiffs are entitled to and therefore assert a claim for compensatory and punitive damages in an amount sufficient to punish and deter Defendants and others like them from such conduct in the future.

COUNT SIX: WRONGFUL DEATH CLAIM AGAINST THE DEFENDANTS

92)Plaintiff, Roddna Rockymore, re-alleges and incorporates all of the allegations in the Complaint as if set forth herein.

93)Plaintiff shows that the wrongful acts of these Defendants as set out hereunder have caused and contributed to the death of Vivian Rockymore, who died on May 18, 2013, leaving five surviving children.

Survival Damages

94)As a direct and proximate result of the violations of, and the failures to provide for Vivian Rockymore's resident rights by these Defendants as described herein, Vivian Rockymore has been aggrieved and suffered injuries, physical and mental pain and suffering, disability, physical impairment, disfigurement, inconvenience, and loss of capacity for enjoyment of life, and ultimately died. Further, her estate incurred medical expenses and funeral expenses related to her rights being violated.

95)Plaintiff, Roddna Rockymore, brings this action in her capacity as Administrator of the Estate of Vivian Rockymore, to recover damages for the mental, physical and emotional pain and suffering of Vivian Rockymore prior to her death, to recover damages for her death, and also to recover those medical and funeral expenses that resulted from the deprivations and infringements upon Vivian Rockymore's resident rights by these Defendants, all of which such damages resulted from the violations of, and the failures, to provide for Vivian Rockymore's resident rights by these Defendants.

96)These Defendants, by their failure to provide adequate services, care, and treatment, and their failure to provide for Vivian Rockymore's rights, showed willful misconduct, malice, wantonness, and entire want of care that constitutes a conscious indifference to the consequences. Therefore, Plaintiff may be entitled to recover, pursuant to [O.C.G.A. § 51-12-5.1](#), an award of punitive damages to punish, penalize and deter these Defendants, and others similarly situated, from repeating such conduct.

97)WHEREFORE, Plaintiff, Roddna Rockymore, as Administrator of the Estate of Vivian Rockymore, demands trial by jury and judgment against Defendants, Defendants, Drumm Investors, LLC, Beverly Enterprises, Inc., Golden Gate National Senior Care, LLC, GGNSC Holdings, LLC, GGNSC Clinical Services, LLC, GGNSC Administrative Services, LLC, GGNSC Decatur II, LLC., Golden Living Center Glenwood, and Alicia Holliday and HCR ManorCare, LLC, HCR ManorCare, Inc., HCRMC Operations, LLC, HCR ManorCare Heartland, LLC, Manor Care, Inc., HCR Healthcare, LLC, HCR Manor Care Services, Inc., Heartland Employment Services, LLC, Manor Care Rehabilitation Center of Decatur GA, LLC, Manor Care Rehab Decatur, and Betsy Hill for compensatory and punitive damages in an amount to be determined by a jury, and such costs and attorney's fees as may be appropriate under Georgia law.

Wrongful Death Damages

98)As a direct and proximate cause of the negligence of these Defendants as described herein, Vivian Rockymore died on May 18, 2013.

99)Plaintiff, Roddna Rockymore, in his Representative Capacity on Behalf of the Children of Vivian Rockymore, brings this action on behalf of those qualified to recover damages from these Defendants for the full value of the life of Vivian Rockymore, as set forth in [O.C.G.A. § 51-4-2](#).

100) WHEREFORE, Plaintiff, Roddna Rockymore, in his Representative Capacity on Behalf of the Children of Vivian Rockymore, demands trial by jury and judgment against these Defendants for damages for the full value of the life of Vivian Rockymore in an amount to be determined by a jury, and such costs and attorney's fees as may be appropriate under Georgia law.

JURY DEMAND

Pursuant to O.C.G.A. § 15 -12 -122, Plaintiff demands a full jury panel of 12 to try this case.

January 23 2014

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